DE 98-124

GAS RESTRUCTURING

To Address Unbundling and Competition in the Natural Gas Industry

Order Approving Recommendations of the New Hampshire Gas Collaborative

O R D E R N O. 23,652

March 15, 2001

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I. PROCEDURAL HISTORY

On July 8, 1998, the New Hampshire Public Utilities Commission (Commission) issued an Order of Notice opening a docket to address issues concerning unbundling and competition in the natural gas industry, including, *inter alia*, rate design, upstream capacity and storage, downstream capacity and services, transition/stranded costs, obligation to serve, regulation, qualification and registration of marketers, suppliers of last resort, affiliate transactions, system reliability, recovery of societal costs, residential and small commercial/industrial transportation, transportation terms and conditions, types of services provided by a local distribution company (LDC), consumer education and protection, legislation/regulatory changes, and other issues relevant to natural gas restructuring. The order directed interested parties to file written recommendations on the objectives, procedures and methodology to be employed for developing a record pertinent to gas restructuring and competition.

EnergyNorth Natural Gas, Inc. (ENGI), Northern Utilities, Inc.(Northern), and the Office of Consumer Advocate (OCA) having been parties in the predecessor proceeding, Docket DE 98-037, *Investigation into Transportation Rates,* were automatically granted full Intervenor status. Timely notices of intervention were received from New Hampshire Gas Corporation and New York State Electric and Gas Corporation (NHGC/NYSEG)(joint petition), Enron Energy Services, Inc.(Enron), City of Manchester, (Manchester), *All*Energy Marketing Company, LLC (*All*Energy), and MainePower (limited intervention).

Recommendations for developing a record were received from OCA, ENGI, Northern, NHGC/NYSEG, and Manchester. On August 18, 1998, pursuant to the Order of Notice, Commission Staff (Staff), ENGI, Northern, OCA, NHGC/NYSEG, *All*Energy, and Enron conducted a technical session to review the recommendations and develop a common approach to developing a record.

On August 26, 1998, a duly noticed Prehearing Conference was held at the Commission’s offices. As a preliminary matter, Commissioner Geiger, presiding, granted all timely requests for intervention. Staff presented an outline of issues and recommendations for Commission consideration, and a proposed procedural schedule establishing collaborative meeting dates for the months of September, October, November and December 1998. Specifically, it was recommended: that the case be conducted as a collaborative with Staff serving in a mediation role unless otherwise petitioned, that the procedures submitted by ENGI be adopted as a framework for conducting the collaborative unless otherwise petitioned, that interim reports be provided at critical phases or when milestones had occurred, and that the use of customer surveys and focus groups be examined. In addition, the Business and Industry Association of New Hampshire (BIA) orally requested intervention, which was later submitted in writing.

On September 14, 1998, the Commission issued Order No. 23,018 adopting the recommended procedures and schedule, noting “that a collaborative approach is the most preferable procedure for developing a record”. *Re Gas Restructuring* 83 NH PUC 479, 480 (1998). In addition, the Order granted the late-filed intervention request of BIA and extended the date for intervention to September 24, 1998.

On September 22, 1998, the New Hampshire Governor’s Office of Energy and Community Services (GOECS) filed a petition to intervene. On September 23, 1998, James T. Rodier (Rodier) filed a petition to intervene. On September 24, 1998, the New Hampshire Propane Coalition filed a petition to intervene. On October 5, 1998, StatOil Energy, Inc. and Enserch Energy Services, Inc. (StatOil) filed a joint petition to intervene out of time. On November 13, 1998, the Commission granted all pending petitions for intervention.

On November 3, 1998, the Commission issued a Request for Proposal (RFP) for a consultant to conduct focus groups and survey residential and small business customers in New Hampshire regarding the introduction of competition in the natural gas industry. On November 13, 1998, the Commission directed the parties to file comments on the methodology to be employed to recover the costs associated with the RFP. Comments were filed by OCA, ENGI, Northern, and NHGC/NYSEG.

On January 6, 1999, the Governor and Council approved a customer survey consulting contract, submitted by the Commission on December 22, 1998, between the Commission and RKM Research and Communications Associates (RKM). On January 19, 1999, the Commission advised the parties that the costs of the survey and other activities performed by RKM in association with Gregory S. Franklin Associates would be charged to ENGI and Northern in proportion to their respective annual jurisdictional revenues in New Hampshire.

On January 13, 1999, AGF Direct Gas Sales and Servicing, Inc. (AGF) was added to the limited service list.

On April 20, 1999, RKM issued a final report entitled *Interest in Competition in the Natural Gas Industry* (RKM Report) based on data collected via focus groups and telephone surveys conducted with residential and small commercial customers. The New Hampshire Gas Collaborative (Collaborative)[1] was briefed on the RKM Report on May 4, 1999 and the Commission was briefed on May 7, 1999.

On May 14, 1999, Select Energy Inc.(Select) submitted a petition to intervene as a limited intervenor. On May 21, 1999, ENGI

[1]The Collaborative was open to, and consisted of, all intervenors and Staff. All Parties did not attend all meetings. Ultimately, the *Report* discussed below was filed by Collaborative participants ENGI, Northern, the OCA and Staff.

submitted a response to Select’s petition for intervention indicating concerns without objecting to the petition. On May 24, 1999, EnergyEXPRESS, Inc. (EnergyEXPRESS) submitted a petition for limited intervention. On June 1, 1999, Northern filed comments on Select’s petition for intervention noting concerns without objecting to the petition. On July 8, 1999 and July 9, 1999, the Commission approved the petitions for limited intervention of Select and EnergyEXPRESS, respectively.

On June 2, 1999, pursuant to Order No. 23,018, the Collaborative filed an interim report with the Commission. The report detailed activities conducted to date, discussed the long term outlook for competition, and noted that it was anticipated that a hearing would be held early in the year 2000. The report also included a schedule of activities for the future.

On September 1, 1999, *All*Energy, EnergyEXPRESS, Statoil, Enron, AGF, and TXU Energy Services, Inc. (TXU) filed a joint letter indicating that, regrettably, they would no longer be able to participate in the collaborative process. The Marketers averred that ENGI’s and Northern’s unwillingness to craft a program with less than 100% mandatory capacity assignment, and their own limited resources, precipitated their decision to withdraw from the Collaborative.

On January 4, 2000, pursuant to Order No. 23,018, the Collaborative submitted a brief progress report indicating that it was near filing its final report to the Commission.

On March 10, 2000, after 36 Collaborative meetings over a 17 month period, Staff, ENGI, Northern, and OCA (together the Joint

Signatories) filed the *New Hampshire Gas Collaborative Final Report* (Report) with the Commission. The document included an historical synopsis of the proceeding, recommendations for expanding competition in the commercial and industrial sector, a model tariff for natural gas delivery service, and proposed rules pertinent to the registration and requirements of competitive natural gas suppliers and aggregators, addressing all the issues raised in the Order of Notice. The Report urged the Commission to seek comment on the recommendations and hold hearings on the merits. In addition, the Report identified an important timing issue with respect to establishing a date to differentiate between existing transportation customers and potential migrating customers, if the Commission approved the recommendations, regarding mandatory capacity assignment. The Report proposed that the date for identifying those transportation customers who would not be subject to mandatory capacity assignment be the date of the Order of Notice to be issued.

On March 14, 2000, the Commission issued an Order of Notice seeking comment on the Report by April 7, 2000, ordering that any party seeking to intervene who is not already a party do so by April 27, 2000, and scheduling a hearing on the merits for May 2 and 3, 2000. The issues included those previously enumerated as well as the effective date, if any, for mandatory capacity assignment for transportation customers.

Timely comments were filed individually by ENGI, Northern, GOECS, NHGC/NYSEG, OCA, Staff and EnergyEXPRESS and jointly by

Amerada Hess Corporation[2], *All*Energy, AGF, and TXU (collectively, the Marketers).

A hearing was held at the Commission offices on May 2, 2000. The Joint Signatories presented a panel of witnesses in support of the Report: Joseph A. Ferro, Director of Revenue Development for Northern and its parent, Bay State Gas Company; Francisco C. DaFonte, Director of Gas Control for Northern; Mark G. Savoie, Manager of Regulatory Affairs for ENGI; Donald E. Carroll, Vice-President of Gas Supply for ENGI; Kenneth E. Traum, OCA Finance Director; and Robert F. Egan, Commission Utility Analyst. While no other witnesses testified in favor or opposition to the Report, Ms. Kroll made a statement on behalf of GOECS, as did Mr. Rodier on behalf of AGF.

[2]On March 31, 2000, Amerada Hess Corporation purchased 100% of the outstanding stock of Statoil, a party to this docket.

II. POSITIONS OF THE PARTIES AND STAFF

1. New Hampshire Gas Collaborative Final Report (Report)

On March 10, 2000, the Joint Signatories filed a Report with the Commission containing recommendations for expanding competition to Commercial and Industrial (C&I) natural gas customers. Individual comments of the Joint Signatories are provided below. Specifically, the Report's recommendations stated that the Commission should:

a. Provide all firm C&I natural gas customers with an expanded opportunity to choose a supplier for the gas commodity component of their service by approving the attached Model Delivery Tariff;

b. Implement competition for C&I natural gas customers without shifting costs to residential customers;

c. Conduct a consumer education campaign as soon as practical following the date of a final order in this proceeding in order to ensure that C&I natural gas customers are fully informed and have reasonable expectations about delivery service;

d. Evaluate the desirability of restructuring natural gas service to the residential sector at a later date based on experience gained in the C&I market; and

e. Promulgate Commission rules governing supplier and aggregator registration and supplier conduct as well as transactions between LDCs and their affiliates.

In addition to the recommendations, the Report provided an historical overview of the Collaborative process and a discussion of several issues which can be summarized as follows:

(1) Model Delivery Tariff

The Joint Signatories stated that the proposed Model Delivery Tariff will facilitate increased competition for C&I natural gas customers by offering new services, in particular, non-daily metered service. (In the Report, this phrase refers to transportation service using existing meters read once a month (or less frequently), rather than having to install a meter capable of being read on a daily basis.) In addition, the Model Delivery Tariff is consistent with national business rules and standards, and provides all of the necessary tools to implement a competitive market.

(2) Capacity Assignment

The Joint Signatories noted that the most contentious policy issue which divided the Collaborative participants was mandatory assignment of capacity to migrating sales customers. The Joint Signatories stated that, after extensive discussion, mandatory capacity assignment was chosen at this time for reliability considerations. In addition, the Report recommended that the date of the next Order of Notice[3] in this proceeding be set as the date which delineates which delivery customers would be exempt from mandatory capacity assignment.

(3) Integration of Existing LDC Tariffs

The Joint Signatories noted that each utility would have to integrate the Model Delivery Tariff with their existing tariffs. Also, due to unique operational characteristics, each LDC may have to file variations to the Model Delivery Tariff in order to address company specific situations.

(4) Proposed Procedural Schedule

The Report included a proposed procedural schedule which provided for a six month period between the final order and actual implementation of competitive service in order to implement a consumer education program, design and test electronic data interchange programs, and refine internal capacity assignment and algorithm procedures.

(5) Rate Redesign

The report noted the intentions of the LDCs to file revenue neutral rate redesign cases in the near future. The Joint Signatories indicated that rate

[3] I.e. March 14, 2000.

redesign is a necessary precursor to implementation of the Model Delivery Tariff.

2. Comments of Northern Utilities, Inc.

Mr. Ferro testified that the unbundling structure described in the Report creates an opportunity for certain benefits. First, through the application of non-daily metered service, supplier choice should become a more viable option for all customers in general, and small use customers, with heat-sensitive load, in particular. Second, the Model Delivery Tariff establishes a structure for allocating and assigning the LDCs' capacity resources, both upstream and on-system, such that they are available to serve all customers. In doing so, reliability is ensured and the associated costs related to capacity resources are not unfairly borne by any one group of customers. Third, the Model Delivery Tariff provides for uniform provisions among the LDCs in New Hampshire, and are quite similar to the provisions in the model terms and conditions that are about to be adopted or implemented in Massachusetts. This allows for a great deal of standardization in the provisions that would facilitate customer choice, and, in turn, should allow for marketers to more effectively conduct business in the State of New Hampshire, in the Commonwealth of Massachusetts and throughout the region. Finally, existing industrial customers who are now taking unbundled service could continue enjoying those savings under the same economic rules as prior to these provisions. These benefits are created while maintaining reliability of gas supply service to New

Hampshire and avoiding any kind of cost shifting from migrating customers to those customers who choose to stay with the LDC.

3. Comments of EnergyNorth Natural Gas, Inc.

Mr. Savoie testified that the Report recommendations will ensure that the LDCs continue to provide a high level of service reliability to customers at the lowest possible cost. The restructuring plan, as provided for in the Report, provides for more economical competitive natural gas supplies to customers who currently have that choice, namely C&I natural gas customers. It expands that choice by not making the daily metering requirement option the only option, i.e., that a customer could also opt to keep their current meter and not incur the additional costs of a daily meter. ENGI believes that there will be some increased competition, despite the Marketers' assertion to the contrary. The plan avoids cost shifting and the creation of stranded costs; envisions continued monitoring and revisions to the provisions in the Model Delivery Tariff; and provides that the level of reliability that has long been maintained in the State of New Hampshire will not be compromised. ENGI maintains that the plan provides that, when the time is right regionally and there is a workable capacity market, New Hampshire will be poised to react very quickly.

Mr. Savoie disputed the Marketers' statement that the "LDCs continuously failed, after repeated requests, to provide the Collaborative with enough information to allow the Collaborative to calculate the true financial impact to all LDCs if less than 100 percent mandatory capacity assignment was allowed." Mr. Savoie maintains that ENGI responded to their request and believes that they were completely satisfied with the data provided to them, although they were not satisfied with ENGI's indication that it was not willing to go to below 100 percent mandatory capacity assignment and merely assume reliability is maintained. Regarding the draft rules, Mr. Savoie stated that they are only a starting point for a rulemaking docket, and that the Marketers and other parties will be able to provide their input in that proceeding. Mr. Savoie maintains that ENGI's service has been very good, with a high level of reliability, at a very reasonable cost, and it is not willing to lower the bar in order to create artificial savings to spur the market. Regarding the Marketers' request that the Commission, instead of approving the Report, send the parties back to the collaborative process, Mr. Savoie stated that the only prudent thing to do at this time would be to approve the Model Delivery Tariff, monitor the regional and national developments, and make changes as appropriate.

4. Comments of Commission Staff

Mr. Egan testified that Staff supports a gradual move towards restructuring and continued observation of emerging developments in larger markets. Mr. Egan stated that, as noted in the RKM Report, New Hampshire customers are satisfied with the current system and their LDCs, New Hampshire is 47th in the nation in terms of a gas market, and actions taken here will not establish national or regional policies. Staff maintains that, currently, this market is inexperienced, with uncertain benefits, especially as it relates to the smaller customers, particularly the residential class. Staff noted that a workable natural gas capacity market has yet to emerge in New England, that there is a lack of urgency to restructure, and that New Hampshire will have the opportunity to observe larger states in their efforts, without taking significant risks. On the other hand, the RKM Report also indicated that customers have an interest in competition and customer choice.

Staff believes that mandatory capacity assignment at this time ensures reliability and eliminates the creation of stranded costs. As for the Model Delivery Tariff, Staff stated that, if approved by the Commission in this proceeding, it would not actually establish a tariff for any particular utility at this time, but that the individual utility tariffs would be filed, reviewed and approved in accordance with Commission rules. While the Joint Signatories provided a set of draft rules regarding registration and conduct of competitive natural gas suppliers and aggregators as an attachment to the Report, they are just a starting point for the Commission to open a rulemaking proceeding, and all parties have reserved the right to examine in greater detail all the specifics of those rules at that time and make additional recommendations.

Finally, Staff noted that restructuring should occur coincident with rate redesign, in order to send the correct pricing signals to all customers. It is Staff's understanding that even if competition were not to move forward in New Hampshire, it would still be appropriate to conduct a rate redesign proceeding and send the proper price signals. However, it is important, in the process of the rate redesign proceeding, among other things, to more carefully identify delivery costs. Staff believes the implementation of competition should be coincident with rate redesign, because as they were designed in the previous case, Docket DE 95-121, the sales rates and delivery rates are not equal and do not send the proper price signals. Rate redesign, among other things, should correct that inequity. Therefore, restructuring requires rate redesign.

5. Comments of the Office of Consumer Advocate

Mr. Traum testified that based on information provided to the Collaborative, through discussions with other consumer advocate offices, and from the trade press, the OCA, in coordination with its Advisory Board, concluded that, at this time, customer choice would not reduce bills to the residential class as a whole, customer choice was more likely to increase their bills due to cost shifting, and service reliability might suffer. The OCA interpreted the results of the RKM Report to be that residential consumers were overwhelmingly or very satisfied with their current service. Without the clear prospect of significant bill reductions for residential customers, the OCA concluded, and the settlement incorporates, excluding the residential classes from customer choice at this time, while minimizing any cost shifting resulting from broadening choice within the C&I classes. By opening up customer choice to small commercial customers, the Commission will get a better idea if suppliers may pursue that load and similarly the residential load in the future. The OCA believes its concerns about the potential lack of choice for residential customers were legitimized by the Marketers' comments, in that they only referred to participation in natural gas markets serving C&I natural gas customers in other jurisdictions. The OCA supports the mandatory capacity assignment aspects of the settlement, where the assignment allocation was based on usage at company peak, as the most equitable way of sharing what the OCA views as being potential stranded costs, while retaining today's high level of reliability. Regarding rate redesign, the OCA supports that aspect of the settlement because it does not believe it can object to the LDCs' right to petition for redesign of their rates, even though, at this time, the OCA does not necessarily agree that, as far as the residential class is concerned, there is any need for rate redesign.

6. Comments of New Hampshire Gas Corporation and New York State Electric & Gas Corporation

NHGC/NYSEG support the development of an unbundled competitive environment and a market characterized by many sellers, including the LDC, offering a full range of services. NHGC/NYSEG generally agree with the recommendations contained in the Report. Their written comments were limited to two issues: mandatory capacity assignment and customer switching rules. NHGC/NYSEG support mandatory capacity assignment as crucial for an effective gas transportation program in order to ensure that no diminution in natural gas reliability occurs, and that inequitable cost shifts be avoided in pursuit of competition. Customers migrating from sales service to delivery only service will be ensured that sufficient upstream capacity is available to serve them during the most critical time periods, while LDCs and remaining sales customers will not be burdened with natural gas capacity costs associated with migrating customers.

NHGC/NYSEG maintain that the Marketers' position that mandatory capacity assignment is an impediment to competition is only due to their unwillingness to use the LDCs upstream capacity at maximum Federal Energy Regulatory Commission (FERC) rates rather than discounted capacity which can be found at lower rates in off-peak periods. NHGC/NYSEG maintain that under a non-assignment environment, migrating delivery-only customers strand capacity costs on remaining sales customers, creating an inequitable and inefficient subsidy. NHGC/NYSEG also request that the customer switching rules be modified to allow a customer to switch from sales service to delivery-only service or from one supplier to another at a time other than the customer's normal billing cycle. NHGC/NYSEG prefer to allow all customers to switch at the beginning of each calendar month. They propose that all customers be allowed two (2) free switches per year with a switching fee for additional voluntary switches.

7. Comments of the Governor's Office of Energy and Community Services

GOECS supports the Joint Signatories' recommendation to make it feasible for all commercial and industrial customers to take advantage of competitive gas supplies, if they so choose without shifting costs to the residential class. GOECS maintains it is in the public interest to eliminate as many barriers as possible that prevent C&I natural gas customers from taking advantage of unbundled gas delivery service, whether that service is on a stand-alone basis or if it is part of a bundled energy service package. GOECS also supports the recommendation that the residential class should continue to receive regulated bundled service from the local gas utility until such time as competition is deemed to be in the best interest of that class. GOECS strongly supports the recommendation that the residential customers should be guaranteed protection against any cost shifting that might otherwise result from the introduction of retail competition in the commercial and industrial markets.

The Collaborative has recommended that unbundled service for residential customers should be considered after the proposed tariff changes, if they are approved by the Commission, have been in effect for the C&I natural gas customers for at least one year. This approach for the residential class seems reasonable to GOECS, and it will also provide an opportunity to assess the progress of competition in the C&I gas markets as well. GOECS agrees with the Report that by standardizing the terms and conditions under which unbundled natural gas service is provided, competitive suppliers should find it more economical and attractive to do business in New Hampshire.

GOECS further recommends that, where appropriate and feasible, the Commission consider establishing consistent terms and conditions under which competitive suppliers provide both natural gas and electricity, including rules such as those that govern supplier and aggregator registration, consumer protection, supplier conduct and standards of conduct applicable to utilities and their affiliates. GOECS believes that such consistency should help foster full and fair competition in New Hampshire, and will be particularly apt as mergers and acquisitions give rise to companies that are operating in both gas and electric industries.

GOECS also urged the Commission to open a docket for the purpose of having interested parties explore and recommend opportunities for New Hampshire's gas utilities to leverage the experience and the infrastructure that exists throughout the state and the region with respect to energy efficiency programs. Finally, GOECS indicated that although it has not addressed certain public policy recommendations contained in the Report, that failure should not be interpreted to convey either its support for nor its opposition to those recommendations.

8. Comments of the Marketers

Although the Marketers maintain their firm belief in the superiority of the collaborative process over traditional litigation, they assert, in their written comments, that C&I natural gas customers will not have any expanded opportunities to choose alternative suppliers once the Model Delivery Tariff is implemented. The Marketers base this statement on their extensive C&I marketplace experience in general, and in

Massachusetts in particular, where mandatory capacity assignment was implemented.

The Marketers aver that the current economics of gas marketing are highly dependent upon a marketer’s ability to obtain less costly pipeline capacity than the LDC is able to utilize. The Marketers also assert that the LDCs’ obligation to serve as Supplier of Last Resort conflicts with the needs of the marketer. The Marketers maintain that markets without mandatory capacity assignment have not experienced any degradation of reliability or cost shifting. The Marketers suggest the setting of limits or a phased approach to voluntary capacity assignment would allow markets to develop.

The Marketers maintain that the LDCs were unwilling to consider anything but 100% mandatory capacity assignment and failed, after repeated requests, to provide the Collaborative with sufficient information to calculate the financial impact to all customers of less than 100% mandatory capacity assignment. They also object to the LDCs recovery of costs related to expanded customer choice from C&I customers.

The Marketers recommend the Commission reject the Report, and direct the Collaborative to develop an alternative treatment of pipeline capacity.

The Marketers further assert that the draft rules pertinent to competitive natural gas suppliers and aggregators are themselves a significant market barrier. The Marketers suggest that had they continued in the collaborative process, the terms and conditions in the proposed Model Delivery Tariff would be significantly different. They cite the consumer protection requirements as too extensive for C&I customers, resulting in additional costs and difficulties; the Change of Service rules as unnecessary for C&I customers; burdensome Bill Disclosure Information; an inappropriate Notice of Termination of Service provision; the absence of dispute resolution procedures for marketer disputes with LDCs; and excessive registration fees.

During the hearing, AGF, a limited intervenor, maintained that it was not objecting to the Report nor to mandatory capacity assignment if certain reporting protocols were in place. Subsequent to the hearing, on May 12, 2000, AGF informed the Commission that it supports the comments and recommendations filed by the Marketers, but in the event the Commission did not adopt the recommendations of the Marketers, AGF supported the alternative approach it presented. This approach included requirements that an LDC receive approval from the Commission before entering into any new or renewed capacity contracts and the criteria for such Commission authorization; and LDCs’ providing information to competitive natural gas suppliers on a periodic basis sufficient for determinating the extent to which the LDC is able to mitigate otherwise assignable pipeline costs through capacity release.

III. COMMISSION ANALYSIS

(1) New Hampshire Gas Collaborative Final Report (Report)

We commend the parties who participated in the Collaborative Process. Their hard work and willingness to attempt to resolve the many difficult issues that arise in the transition to greater competition have greatly assisted the Commission in our deliberations on this matter. While we are disappointed that the Marketers chose to withdraw from the process, we have taken into consideration the comments which they have filed and encourage them to participate in any and all future proceedings.

After consideration of the various comments filed by the Joint Signatories and other interested persons, we will approve the Report. Not all parties agreed to the recommendations in the Report, and we will provide for continued oversight of the process of liberalization of the gas markets, including continued evaluation of the effects of the provisions to which the Marketers objected.

This Order will continue the movement towards competition originally initiated by our Order No. 20,950 in *Generic Investigation into Natural Gas Transportation Service and Rates,* 78 NH PUC 479 (1993), (Generic Investigation Order) in which we first authorized natural gas transportation rates for large industrial customers. The Report here is consistent with, and expands upon, the Generic Investigation Order and provides for the next phase of unbundling and feasible customer choice for all commercial and industrial customers. The continued evolution in market conditions and technology makes this possible.

As noted above, the Commission undertook a customer survey regarding the introduction of further competition in the natural gas industry. The RKM Report was instructive regarding customers' interest in, and expectations from, gas competition. The overwhelming majority of residential customers (93%), and most commercial customers (88%), appeared to be satisfied with their LDC. At the same time, the overwhelming majority of residential customers (83%) and commercial customers (90%) said they either strongly or moderately supported the introduction of competition in the natural gas industry. The majority of residential (61%) and commercial customers (68%) also expressed average to high interest in being able to choose a natural gas supplier.

On the other hand, less than 35% of residential customers, and 48% of commercial customers, said they would probably or definitely switch today if they were able to do so. More than half of the residential and commercial customers said their current LDC should also be able to sell directly to customers. An overwhelming majority of residential customers (92%) and commercial customers (87%) said that there should be a safety net service available to customers who do not switch natural gas suppliers.

While widely-publicized developments in the competitive electricity markets in California might be expected to have moved public opinion from the widespread support of customer choice RKM found in 1999, it is hard to believe that those events would have so eroded support for customer choice in New Hampshire as to render the RKM findings unusable today to inform our decision to go forward in the limited fashion recommended in the Report.

We believe the Report has appropriately taken the survey results into consideration in crafting a proposal which will move unbundling and customer choice forward in a careful and deliberate manner. By limiting unbundling and customer choice to commercial and industrial customers, and providing for non-daily metered delivery service, we are providing those customers with the opportunity to choose bundled or unbundled service. This incremental approach will also provide additional experience by which to gauge whether and when to provide similar opportunities to residential customers in a stable and non-disruptive manner.

As there were few areas of disagreement between the Joint Signatories and other Parties, we will discuss only those areas of disagreement below.

(2) Mandatory Capacity Assignment

As the Report noted, mandatory capacity assignment for customers not already taking delivery-only service was the most contentious issue facing the Collaborative. We agree with the Joint Signatories that adoption of mandatory capacity assignment at this time will facilitate the prompt implementation of expanded unbundled service without raising concerns regarding cost shifting and system reliability. However, we recognize the concerns raised by the Marketers, and will monitor the development of secondary gas capacity markets, and the extension of LDCs’ firm capacity contracts, as we proceed with the expansion of unbundling and customer choice options reflected in the Report.

The Marketers argue that mandatory capacity assignment *per se* will eliminate the possibility of customer choice. The marketers are correct in noting that the extent of consumer choice of competitive supplier offerings has shown a strong positive correlation to the adoption of voluntary capacity assignment by utilities and commissions. However, we are not prepared to believe that marketers can bring absolutely no added value to customers beyond the avoidance of firm transportation capacity costs associated with capacity purchases out of the LDCs’ current portfolios. We also agree with ENGI and NHGC/NYSEG that voluntary capacity assignment entails potential cost shifting between choosing customers and non-choosing customers, and the risk of creating stranded firm pipeline capacity costs. We are also mindful of the concerns raised by the Joint Signatories regarding the impact on system reliability of further reliance on secondary supplies by migrating customers.

We recognize that, as the Marketers point out, less expensive transportation costs are achievable through reliance on secondary capacity for transportation of commodity to the city gate. We also take note of the Marketers' contention that reliability has not suffered in regions of the country that have adopted voluntary capacity assignment. However, upstream gas capacity markets are new enough that they have not been tested under the full range of load and capacity situations. Staff also commented that in many emerging unbundling markets, there is significant excess capacity, unlike in New England, where there are limited transport options. As we monitor the roll-out of the additional customer choice made available under the terms of the Report, we will monitor the experience of other states and regions where voluntary capacity allocation has been adopted, to confirm the extent to which system reliability remains unaffected by greater proportions of load served under secondary capacity arrangements.

In addition to the concerns raised by some of the Joint Signatories, we must recognize the potential for the emergence of greater competition to bring with it greater price volatility. A careful approach is also warranted by the experience of other states, where competitive suppliers have withdrawn from the market in the face of the increasing and more volatile prices of the wholesale market, and their customers have had to return to the last resort service provided by the LDCs.

Also, recent growth in demand for gas in New England has put stress on the gas transport capacity in the Region. The New England Independent System Operator has recently warned that upgrades to capacity are needed to prevent electricity shortfalls caused by the inability of merchant generators relying on non-firm gas capacity contracts to obtain supply under peak or seasonal conditions. While this fact renders the cost-shifting/stranded cost potential of voluntary capacity assignment less of a concern, it does in turn suggest we should give due emphasis to the Report's observation that:

> All parties agreed that voluntary capacity assignment presented concerns regarding reliability of service that would need to be addressed in order to expand the availability of unbundled service." (p. 10)

It is difficult to find a workable balance between the concern for market creation on the one hand, and for reliability, price stability, and the avoidance of stranded costs and cost shifts on the other. This is particularly so with markets, such as the utility services we regulate, that are characterized by mixed competitive and monopoly functions. The Marketers accuse the Joint Signatories of a basic mistrust of market economics. In considering the pace of introduction of competition to traditionally monopoly services affected with the public interest, the Commission is obliged to take into account issues of reliability and volatility in essential energy markets. A cautious approach, while not proceeding as quickly or as radically as might be desirable, is necessary to maintain public confidence in the continued liberalization of these markets.

As Staff indicated, many of the LDCs' existing contracts are expiring or are near expiration. As we proceed further with unbundling and choice, we will monitor any new or renewed capacity contracts entered into by the LDCs in the future in order to minimize or eliminate stranded costs, should some form of voluntary capacity assignment become appropriate, *e.g.*, as reliability issues are addressed and a fully competitive upstream market develops. We will, therefore, require Northern and ENGI to notify the Commission, at least sixty (60) days in advance, of any intent to enter into any new pipeline capacity contract or renewal of any existing pipeline capacity contract for the purpose of providing sales service. In addition, we direct the Natural Gas Collaborative to investigate what information may be provided to the Commission, and interested parties, for the purpose of determining the extent to which the LDCs are able to mitigate otherwise assignable pipeline costs through either short term or long term capacity release.

(3) Model Delivery Tariff

The Report proposed adoption of a Model Delivery Tariff to minimize customer confusion and implementation problems. The Model Delivery Tariff includes the following types of service:

- Non-daily metered delivery service (not currently available)
- Daily metered delivery service (currently available)
- LDC sales service (traditional sales service currently available)
- Peaking Service - suppliers, or customers acting as their own suppliers, are required to purchase Peaking Service from the LDC

Unique operational characteristics of each LDC may require them to file specific variations.

We find the Model Delivery Tariff provides a useful level of standardization with regional and national standards that will facilitate implementation. If more states proceed toward gas unbundling, the integration of the Model Delivery Tariff with the LDC's existing terms and conditions will allow the LDCs and the Commission to act quickly in the future to expand unbundling if New Hampshire determines to pursue this course. See RSA 374:60.

Of course, utility rates, terms and conditions are not carved in stone, and will be subject to continued monitoring and revision as necessary. For example, the

Marketers suggest that had they continued in the collaborative process, the terms and conditions in the proposed Model Delivery Tariff would be significantly different. We do not have on this record a clear statement of the objections of the Marketers to the details of the proposal. However, we invite the Marketers to file proposed tariff changes for our consideration, should it be necessary or desirable to make amendments to the Model Tariff as the implementation of further unbundling proceeds.

(4) Rulemaking Proceedings

The Report including draft Competitive Natural Gas Supplier and Aggregator Rules, and the Joint Signatories recommended the Commission initiate rulemaking proceedings for those rules and rules related to affiliate transactions in order to foster full and fair competition. The Marketers asserted that the rules, as proposed, presented a significant market barrier for a variety of reasons. NHGC/NYSEG proposed changes to the customer switching rules. GOECS recommended that the Commission consider establishing consistent terms and conditions for both natural gas and electric suppliers and aggregators.

As ENGI noted, the draft rules are only a starting point for a rulemaking docket and that all parties will be afforded an opportunity to comment at that time. In addition, as the Report indicated, the Joint Signatories recognized that the draft rules may need further revision and should only be considered a starting point. Therefore, there is no need in this order for further discussion regarding the draft rules.

(5) Restructuring Costs

The Joint Signatories proposed that the LDCs defer and recover restructuring costs through a surcharge to all customers eligible for transportation service, *i.e.* commercial and industrial customers, in a manner similar to that authorized for electric utilities in the retail competition pilot program. Order No. 22,033, *Re Retail Competition Pilot Program,* 81 NH PUC 130, 145 (1996), states:

> Reasonable incremental costs, approved by the NHPUC, which are directly related to serving Pilot customers may be recovered from participants... A utility shall be entitled to levy a surcharge on all customers to recover reasonable administrative costs, approved by the NHPUC, associated with the establishment and implementation of the Pilot.

The Marketers strongly objected to the recovery of these costs. They assert that such recovery would be tantamount to paying the LDCs to *not* implement choice.

This issue presents again a difficult issue of balance and degree. Any cost necessary to develop a market structure, however reasonable, will put some burden on the ability of that market to deliver savings relative to the status quo, even where, as here, the cost would not be borne solely by those customers who in fact benefit by exercising an option to seek a better supply arrangement. And as these markets are still maturing, there can be no ironclad guarantee that an effectively competitive market will emerge rapidly from the structure the LDCs will develop pursuant to the Report we approved today.

We agree with the Joint Signatories that the expenses of market development are a reasonable expense of implementing further customer choice. We agree they should be recovered from those customers affected by this order. However, we are concerned about the level of expenses estimated by the LDCs for this effort, particularly in light of the Marketers' forecasts of the limited benefits that can be obtained under the market model adopted for the next phase of market liberalization. Accordingly, we will direct Northern and ENGI to develop a proposed market development surcharge mechanism for recovery of this category of costs, and caution the LDCs that we will carefully review the level and reasonableness of the costs presented for recovery.

(6) Energy Efficiency Programs

In its comments, GOECS urged the Commission to open a docket for the purpose of exploring opportunities to leverage the experience and the infrastructure existing throughout the state and the region with respect to energy efficiency programs. The Report also acknowledged that further consideration may be appropriate. Since the hearing in this docket, the Commission issued Order No. 23,574 (November 1, 2000) in Docket DR 96-150, Electric Utility Restructuring, which addressed energy efficiency issues as they apply to New Hampshire's jurisdictional electric utilities. In that Order, we deferred the decision as to whether the Commission should impose the guidelines in the order on New Hampshire's natural gas utilities. We observed that, although Northern participated in the New Hampshire Energy Efficiency Working Group's meetings, ENGI did not. Therefore, we afforded all parties the opportunity to comment on the applicability of Order No. 23,574 on the gas utilities.

In an effort to avoid duplication of parties' efforts, we will continue to address energy efficiency issues for gas utilities in Docket DR 96-150 until such time that we determine a separate docket is necessary. Without predetermining whether such programs are appropriate or cost effective, we believe the continued exploration is a worthwhile endeavor.

Based upon the foregoing, it is hereby

ORDERED, that the *New Hampshire Gas Collaborative Final Report* is **ACCEPTED** and **APPROVED** as specified in this Order; and it is

FURTHER ORDERED, that all of Northern’s and ENGI’s commercial and industrial customers not already taking delivery-only service, currently known as transportation service, or who do not have an application for such service pending, as of March 14, 2000, be eligible for customer choice subject to mandatory capacity assignment; and it is

FURTHER ORDERED, that Northern and ENGI customers who migrated from sales to delivery service prior to, or who have an application for delivery service pending as of March 14, 2000[4], shall remain exempt from mandatory capacity assignment, unless or until such time as they return to sales service; and it is

FURTHER ORDERED, that Northern and ENGI customers who are not subject to mandatory capacity assignment shall be afforded the opportunity to elect capacity through an "open season" procedure to be established by the LDCs based on the availability of capacity, as provided for in the Model Delivery Tariff; and it is

FURTHER ORDERED, that Northern and ENGI incorporate the Model Delivery Tariff into their existing general tariffs, and that to the extent the LDCs files specific variations in certain cases in order to address company-specific situations, such variations shall be identified, explained and supported by prefiled direct testimony and exhibits filed at least ninety (90) days prior to the effective date for implementation of restructuring; and it is

FURTHER ORDERED, that the Commission's Consumer Affairs Division, in conjunction with interested Natural Gas Collaborative participants, develop a customer education plan for commercial and industrial natural gas customers; and it is

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[4]The date of the Order of Notice establishing hearing dates in this proceeding.

FURTHER ORDERED, that the Collaborative review and advise the Commission regarding adoption and implementation of the Massachusetts Gas Unbundling Collaborative electronic business transaction (EBT) standards or such other EBT standards as may be necessary and appropriate; and it is

FURTHER ORDERED, that six (6) months prior to the effective date of the new tariff provisions regarding delivery service, the Natural Gas Collaborative shall, among other things, implement the consumer education program, design and test electronic data interchange programs, and refine internal capacity assignment and algorithm procedures as necessary; and it is

FURTHER ORDERED, that the date for implementation of restructuring shall be the subject of orders in Docket DG 00-046, *Northern Utilities, Inc.*, and Docket DG 00-063, *EnergyNorth Natural Gas, Inc.* rate redesign proceedings; and it is

FURTHER ORDERED, that a rulemaking proceeding be opened to adopt rules governing competitive natural gas suppliers and aggregators utilizing the draft rules submitted with the Report as the initial proposed rules; and it is

FURTHER ORDERED, that a rulemaking proceeding be opened to adopt rules governing transactions between Northern and ENGI and their respective affiliates, and that the Natural Gas Collaborative is directed to draft proposed rules considering efforts in this regard in other states and in the electric industry in New Hampshire, while also considering circumstances relevant to the natural gas industry in New Hampshire; and it is

FURTHER ORDERED, that Northern and ENGI file the Schedule of Administrative Fees and Charges at least ninety (90) days prior to the effective date for implementation of restructuring; and it is

FURTHER ORDERED, that the information required for Supplier Service Agreements and Capacity Allocators shall be filed by Northern and ENGI at least ninety (90) days prior to the effective date for implementation of restructuring; and it is

FURTHER ORDERED, that Northern and ENGI are hereby authorized to defer and recover, subject to Commission audit and approval, the reasonable costs associated with restructuring through a surcharge, limited at this time to all commercial and industrial natural gas customers eligible for delivery-only service and that the Natural Gas Collaborative shall recommend a recovery mechanism and procedure under which proposed charges shall be filed on an annual basis, subject to review and approval by the Commission; and it is

FURTHER ORDERED, that the Natural Gas Collaborative shall investigate what information may be provided to the Commission, and interested parties, for the purpose of determining the extent to which the LDCs are able to mitigate otherwise assignable pipeline costs through either short term or long term capacity release; and it is

FURTHER ORDERED, that Northern and ENGI shall each notify the Commission, at least sixty (60) days in advance, of any intent to enter into any new pipeline capacity contract or renewal of any existing pipeline capacity contract for the purpose of providing sales service; and it is

FURTHER ORDERED, that the Executive Director provide a copy of the Report and this Order to the Gas Utility Restructuring Oversight Committee established pursuant to RSA 374:60.

By order of the Public Utilities Commission of New Hampshire this fifteenth day of March, 2001.

Douglas L. Patch Commissioner	Susan S. Geiger Commissioner

Attested by:

Thomas B. Getz
Executive Director and Secretary

DE 98-124

Gas Restructuring

Dissenting Opinion of Commissioner Brockway

I believe it is premature to push for greater deregulation in the retail gas industry. Instead, we should wait to ensure that we can make retail electricity competition work, before we proceed in the gas arena. In particular, gas industry deregulation, even for the business classes of customers, could increase consumer complaints, decrease gas reliability, and shift costs between customers. It is unlikely to bring significant benefits to gas customers, particularly medium to small businesses.

The legislature has not ordered us to pursue gas deregulation. We have not had the benefit of guidance from the Gas Utility Restructuring Oversight Committee established pursuant to RSA 374:60. Retail gas deregulation will not lower the very high wholesale prices that we have had to pass through in recent months. In the case of gas deregulation, “if it ain’t broke, don’t fix it.”

Risks of Cost Shift and/or Reduced System Reliability

In states where consumers have been able to switch suppliers and have benefited from the switching, the benefits appear to have come largely from shifting capacity costs to non-shopping customers. The proposal of the Gas Collaborative would prevent this unfair result in this New Hampshire. I applaud the majority for approving the mandatory capacity assignment proposal in the Gas Restructuring Report.

Of course, without this unfair cost shifting, moving forward is not likely to produce much in the way of benefit to consumers. The marketers have told us that they cannot compete unless their customers can get out from under the utility’s cost of firm gas transportation capacity. For this reason, gas deregulation will eventually mean more reliance on interruptible pipeline capacity. Further reliance on non-firm gas transportation capacity may have some efficiency appeal, but it likely comes at the expense of gas supply reliability in the region.

Customers who migrate to marketers, and take non-firm supply, could be in for an unpleasant surprise when capacity is unavailable and they must switch fuels or close down from time to time. The additional reliance on the secondary market for gas transport could have unintended but serious spill-over effects, as suggested by the report of the New England Independent System Operator, warning of electricity shortages if gas transport capacity is not upgraded.

So, I agree with the majority that reliability must remain a concern of the Commission, and with the majority’s intention to monitor reliability as the gas restructuring experiment unfolds. But I prefer a structural solution - that is, continuing to use bundled gas and holding off on introducing further deregulation - to relying on unidentified after-the-fact regulatory tools to correct a problem we can anticipate today. We should be careful not to expand the extent to which retail customers rely on sources of supply that may appear reliable, but which may well turn out to be less firm.

Gas deregulation may not provide stable supplies to consumers who switch, even if the marketer chooses a firm transport option. In some of the states that have moved aggressively on gas restructuring, marketers have recently experienced financial difficulties. As wholesale gas prices have risen, a number of marketers around the country have abandoned their retail loads, and hundreds of small consumers have been thrown back onto the local distribution company (LDC) for supply, often at higher prices. This in turn makes it hard for the utility, as supplier of last resort, to plan efficiently to meet expected demands.

Consumer Complaints/Wholesale Market Problems

Meanwhile, competitive gas supply will likely bring with it the entire range of consumer headaches that we have seen in telephone competition. Georgia has seen slamming problems, where customers are switched against their will to different suppliers. In addition, some merchant suppliers in

Georgia have delayed billing for customers, causing confusion and payment problems for customers.

Also, the problems surfacing in the FERC-regulated wholesale electricity transmission and supply markets (including gaming, capacity withholding, and the like) suggest that greater attention needs to be paid to the question of whether wholesale gas markets can be made fully competitive. Markets for network-based necessities have been severely challenged in recent months. The California electricity crisis, while more extreme than the risks we now foresee in the natural gas industry, does give pause when we consider moving ever larger portions of firm supply over to market-based supplies.

If it ain't broke, don't fix it

While the majority of consumers supported the right to buy from competitive suppliers, they did not express a strong desire to switch suppliers themselves. The overwhelming majority said they were happy with their current supplier. We should not force a deregulation with potential risks unless the broad range of consumers insists that gas choice is a high priority. A likely consequence of gas deregulation will be increased pressure to raise residential and small business rates, in order to bring large commercial and industrial rates down and promote competition. While to some extent this cost-shift may be necessary on grounds of cost-causation, we should not push for unnecessary gas unbundling, and then be surprised if small consumers’ rates must rise sharply.

Finally, while gas unbundling cannot guarantee benefits to consumers, the gas companies will be spending real money to implement the unbundling provisions ordered as a result of today’s decision. For example, Northern Utilities and Energy North have estimated it will cost about $200,000 to implement the Model Delivery Tariff. These estimates do not include costs for the rate design case, DC 00-046, which were driven, at least in large part, by the desire to align rates in preparation of gas restructuring. Two-hundred thousand dollars may not seem like a great deal of money, but given the uncertainties about the benefits it will provide, we must ask if it is worth the candle.

Given the uncertainties in the energy market-place, I believe we should defer consideration of greater gas competition until we can be sure that all consumers will benefit, and system efficiency and reliability will not suffer.

I respectfully dissent.

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Nancy Brockway
Commissioner

March 15, 2001

Attested By:

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Thomas B. Getz
Executive Director and Secretary